

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

12	AARON JAMES PIERCE,)	No. C 03-04934 JF (PR)
13	Plaintiff,)	ORDER OF SERVICE; DIRECTING
14	v.)	DEFENDANTS TO FILE
15	JEANNE S. WOODFORD, et al.,)	DISPOSITIVE MOTION OR
16	Defendants.)	NOTICE REGARDING SUCH
17)	MOTION; INSTRUCTIONS TO
			CLERK
			(Docket No. 114)

19 Plaintiff, proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983.

20 Plaintiff has been granted leave to proceed in forma pauperis. (See Docket No. 32.) The Court
21 initially dismissed the complaint with leave to amend. Plaintiff filed an amended complaint
22 which was again dismissed with leave to amend. Plaintiff has filed numerous notices and
23 documents with the Court concerning his claims. As stated in the Court's previous orders, any
24 documentation that Plaintiff wishes the Court to consider regarding his claims must be filed in
25 Plaintiff's amended complaint. The Court now reviews the second amended complaint
26 ("Amended Complaint") as to Plaintiff's claim concerning his medical care and treatment at the
27 Correctional Training Facility in Soledad, California ("CTF") pursuant to 28 U.S.C. § 1915.

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DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. Id. at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. Balistreri v. Pacifica Police Dep’t. 901 F.2d 696, 699 (9th Cir. 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that a person acting under the color of state law committed a violation of a right secured by the Constitution or laws of the United States. West v. Atkins, 487 U.S. 42, 48 (1988).

Liability may be imposed on an individual defendant under section 1983 if the plaintiff can show that the defendant proximately caused the deprivation of a federally protected right. Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988); Harris v. City of Roseburg, 664 F.2d 1121, 1125 (9th Cir. 1981). A person deprives another of a constitutional right within the meaning of section 1983 if he does an affirmative act, participates in another's affirmative act or omits to perform an act which he is legally required to do, that causes the deprivation of which the plaintiff complains. See Leer, 844 F.2d at 633; Robins v. Meecham, 60 F.3d 1436, 1442 (9th Cir. 1995). Sweeping conclusory allegations will not suffice; the plaintiff must instead "set forth specific facts as to each individual defendant's" deprivation of protected rights. Leer, 844 F.2d at 634.

B. Plaintiff's Claim

Plaintiff alleges that CTF prison officials failed to provide adequate medical care and treatment for his hernia condition and Hepatitis C Virus. (Amended Compl. 3.) Deliberate indifference to serious medical needs violates the Eighth Amendment's proscription against cruel and unusual punishment. Estelle v. Gamble, 429 U.S. 97, 104 (1976); McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc); Jones v. Johnson, 781 F.2d 769, 771 (9th

1 Cir. 1986). A determination of “deliberate indifference” involves an examination of two
 2 elements: the seriousness of the prisoner’s medical need and the nature of the defendant’s
 3 response to that need. McGuckin, 974 F.2d at 1059.

4 Plaintiff names Defendant Drs. N. Luca, Clive Robertson, Sinna, and Grewal, all CTF
 5 prison officials, for their varying diagnosis of his condition and failure to order an operation and
 6 therapy. (Amended Compl. 3.) Plaintiff alleges that Defendant Luca stated Plaintiff had a
 7 hernia and at another time did not have a hernia. (Id.) Plaintiff alleges that Defendant Robertson
 8 stated that he had a hernia which did not require an operation. (Id.) Plaintiff alleges that
 9 Defendant Sinna diagnosed a hernia and arthritis but did not order an operation or therapy. (Id.)
 10 Plaintiff alleges that Dr. Grewal stated that Plaintiff “with hernia and arthritis was not an
 11 American[] with Disabilities Act Inmate.” (Id.) In his attached declaration, Plaintiff states that
 12 he has not been receiving the physical therapy and medication which was ordered by Dr. Diana
 13 Bui, who is not named as a defendant in this action. (Pl.’s Decl.) Plaintiff states that “the reason
 14 I disagree[s] with medication and treatments is medication is not strong enough and I am not
 15 receiving treatment I need.” (Id.) Plaintiff also alleges that he is not receiving proper treatment
 16 for his Hepatitis C Virus. (Id.) Plaintiff asserts that he is in constant pain. (Id.) Liberally
 17 construed, Plaintiff’s claims are cognizable under § 1983. See Estelle v. Gamble, 429 U.S. at
 18 104.

19 C. Defendants Woodford, Hamlet and Galgano

20 Plaintiff has failed to allege any connection between the Defendants Jim Hamlet, CTF
 21 Warden, and Jeanne Woodford, Director of the California Department of Corrections, to his
 22 medical claim. Plaintiff is cautioned that there is no respondeat superior liability under Section
 23 1983, *i.e.*, no liability under the theory that one is responsible for the actions or omissions of an
 24 employee. Liability under Section 1983 arises only upon a showing of personal participation by
 25 the defendant. Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). A supervisor may be liable
 26 under section 1983 upon a showing of (1) personal involvement in the constitutional deprivation
 27 or (2) a sufficient causal connection between the supervisor’s wrongful conduct and the
 28 constitutional violation. Redman v. County of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991)

1 (en banc) (citation omitted).

2 Plaintiff has also failed to allege any facts against Lucia Galgano as a supervisor for the
3 Ventura County Parole Office to show that Galgano had a duty or authority to obtain medical
4 treatment for an inmate, which Plaintiff was at the time he filed the instant complaint. See Leer,
5 844 F.2d at 633.

6

7 **CONCLUSION**

8 For the reasons stated above, the Court orders as follows:

9 1. Defendants Jeanne S. Woodford, Jim Hamlet and Lucia Galgano are
10 DISMISSED from this action.

11 2. The Clerk of the Court shall issue summons and the United States Marshal
12 shall serve, without prepayment of fees, a copy of the complaint in this matter, all
13 attachments thereto, and a copy of this order upon **Defendant Drs. N. Luca, Clive**
14 **Robertson, Sinna, and Grewal at the California Training Facility in Soledad,**
15 **California.** The Clerk shall also mail courtesy copies of the Complaint and this order to
16 the California Attorney General's Office.

17 3. No later than **ninety (90) days** from the date of this order, Defendants shall
18 file a motion for summary judgment or other dispositive motion with respect to the claim
19 in the complaint found to be cognizable above.

20 a. If Defendants elect to file a motion to dismiss on the grounds that
21 Plaintiff failed to exhaust his available administrative remedies as required by 42 U.S.C.
22 § 1997e(a), Defendants shall do so in an unenumerated Rule 12(b) motion pursuant to
23 Wyatt v. Terhune, 315 F.3d 1108, 1119-20 (9th Cir. 2003), cert. denied Alameida v.
24 Terhune, 540 U.S. 810 (2003).

25 b. Any motion for summary judgment shall be supported by adequate
26 factual documentation and shall conform in all respects to Rule 56 of the Federal Rules of
27 Civil Procedure. **Defendants are advised that summary judgment cannot be granted,**
28 **nor qualified immunity found, if material facts are in dispute. If any Defendant is of**

1 **the opinion that this case cannot be resolved by summary judgment, he shall so**
2 **inform the Court prior to the date the summary judgment motion is due.**

3 4. Plaintiff's opposition to the dispositive motion shall be filed with the Court
4 and served on Defendants no later than **thirty (30) days** from the date Defendants'
5 motion is filed.

6 a. In the event Defendants file an unenumerated motion to dismiss
7 under Rule 12(b), Plaintiff is hereby cautioned as follows:¹

8 The Defendants have made a motion to dismiss pursuant to Rule
9 12(b) of the Federal Rules of Civil Procedure, on the ground you have not
10 exhausted your administrative remedies. The motion will, if granted, result
11 in the dismissal of your case. When a party you are suing makes a motion
12 to dismiss for failure to exhaust, and that motion is properly supported by
13 declarations (or other sworn testimony) and/or documents, you may not
14 simply rely on what your complaint says. Instead, you must set out specific
15 facts in declarations, depositions, answers to interrogatories, or documents,
16 that contradict the facts shown in the Defendant's declarations and
17 documents and show that you have in fact exhausted your claims. If you do
18 not submit your own evidence in opposition, the motion to dismiss, if
19 appropriate, may be granted and the case dismissed.

20 b. In the event Defendants file a motion for summary judgment, the
21 Ninth Circuit has held that the following notice should be given to Plaintiffs:

22 The defendants have made a motion for summary judgment by
23 which they seek to have your case dismissed. A motion for summary
24 judgment under Rule 56 of the Federal Rules of Civil Procedure will, if
25 granted, end your case.

26 Rule 56 tells you what you must do in order to oppose a motion for
27 summary judgment. Generally, summary judgment must be granted when
28 there is no genuine issue of material fact--that is, if there is no real dispute
about any fact that would affect the result of your case, the party who asked
for summary judgment is entitled to judgment as a matter of law, which will
end your case. When a party you are suing makes a motion for summary
judgment that is properly supported by declarations (or other sworn
testimony), you cannot simply rely on what your complaint says. Instead,
you must set out specific facts in declarations, depositions, answers to
interrogatories, or authenticated documents, as provided in Rule 56(e), that
contradict the facts shown in the defendants' declarations and documents
and show that there is a genuine issue of material fact for trial. If you do
not submit your own evidence in opposition, summary judgment, if
appropriate, may be entered against you. If summary judgment is granted

27 ¹The following notice is adapted from the summary judgment notice to be given to pro se
28 prisoners as set forth in Rand v. Rowland, 154 F.3d 952, 963 (9th Cir. 1998) (en banc). See
Wyatt v. Terhune, 315 F.3d at 1120 n.14.

1 in favor of defendants, your case will be dismissed and there will be no
2 trial.

3 See Rand v. Rowland, 154 F.3d 952, 963 (9th Cir. 1998) (en banc). Plaintiff is advised to
4 read Rule 56 of the Federal Rules of Civil Procedure and Celotex Corp. v. Catrett, 477
5 U.S. 317 (1986) (holding party opposing summary judgment must come forward with
6 evidence showing triable issues of material fact on every essential element of his claim).
7 Plaintiff is cautioned that failure to file an opposition to Defendants' motion for summary
8 judgment may be deemed to be a consent by Plaintiff to the granting of the motion, and
9 granting of judgment against plaintiff without a trial. See Ghazali v. Moran, 46 F.3d 52,
10 53-54 (9th Cir. 1995) (per curiam); Brydges v. Lewis, 18 F.3d 651, 653 (9th Cir. 1994).

11 5. Defendants shall file a reply brief no later than **fifteen (15) days** after
12 Plaintiff's opposition is filed.

13 6. The motion shall be deemed submitted as of the date the reply brief is due.
14 No hearing will be held on the motion unless the Court so orders at a later date.

15 7. All communications by the Plaintiff with the Court must be served on
16 Defendants, or Defendants' counsel once counsel has been designated, by mailing a true
17 copy of the document to Defendants or Defendants' counsel.

18 8. Discovery may be taken in accordance with the Federal Rules of Civil
19 Procedure. No further Court order is required before the parties may conduct discovery.

20 9. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the
21 Court informed of any change of address and must comply with the Court's orders in a
22 timely fashion. Failure to do so may result in the dismissal of this action for failure to
23 prosecute pursuant to Federal Rule of Civil Procedure 41(b).

24 10. Plaintiff's motion for leave to proceed in forma pauperis (Docket No. 114)
25 is DENIED as moot. Plaintiff has already been granted in forma pauperis status in a
26 previous order. (See Docket No. 32.)

27 This order terminates Docket No. 114.

28 IT IS SO ORDERED.

1 DATED: 8/18/08


1 JEREMY FOGEL
2 United States District Judge

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